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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5136 OF 2006

The Commissioner,
Solapur Municipal Corporation & anr. ... Petitioners

V/s

Ashok Ramchandra Shitaphale ... Respondent

Mr. Nitin Jamdar for the petitioners.

Mr. I.M. Khairdi for the respondent.

AND

WRIT PETITION NO. 1140 OF 2007

Ashok Ramchandra Sitaphale ... Petitioner

V/s

Solapur Municipal Corporation & anr. ... Respondents

Mr. I.M. Khairdi for the petitioner.

Mr. Nitin Jamdar for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 1ST AUGUST, 2007.

P.C.:

1. Both the petitions are taken up for hearing forthwith, by consent.

2. The order impugned in the petitions has been passed by the Member, Industrial Court, Solapur in Complaint (ULP) No. 56 of 2004. The Industrial Court has allowed

the complaint filed by the workman who is the petitioner in Writ Petition No. 1140 of 2007. It has been declared that the Corporation which is the petitioner in Writ Petition No. 5136 of 2006 has committed unfair labour practices under Items 6 & 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The Corporation has been directed to make the workman permanent in service from the date when the impugned order was passed and to offer him benefits of permanency. The workman is aggrieved since the order directs granting of permanency only from the date of the order and not from the date of joining. The Corporation, on the other hand, contends that the order of the Industrial Court declaring that it had committed unfair labour practices is illegal.

3. A bare perusal of the order of the Industrial Court shows that the Industrial Court has merely reproduced in para 6, the documents on record with their serial numbers. In para 7, the Industrial Court has paraphrased the evidence of the workman. In para 8, the Industrial Court has paraphrased the evidence of the Corporation’s witness. Para 9, reproduces certain extracts of judgments. Para 10, is the Industrial Court’s consideration of the entire case. Para 10 reads as follows:-

> "10. From the oral evidence, it is crystal clear that the respondent has kept the complainant years together as temporary. Though he has completed 240 days, he has not made permanent. The respondent has violated the provisions of Kalelkar Award and Model Standing Orders. The respondent ought to have made the complainant permanent as soon as the complainant has completed 240 days. As such the respondent has committed unfair labour practice under Items 6 and 9 of the Act, hence I answer issues No.2 and 3 in the affirmative."

4. The order of the Industrial Court does not indicate any consideration on his part of the evidence on record and his assessment of the evidence. The Industrial Court is expected to read the evidence on record, consider whether the issues framed by him are proved, draw his conclusions as to whether the issues have been proved and then decide whether to grant the relief. The impugned judgment does not disclose whether the Member, Industrial Court has applied his mind to the evidence before him. Merely paraphrasing the evidence of the witnesses would not amount to consideration of the evidence. There is no finding of the Industrial Court indicating that the issues framed by him had been

proved. Unless there is a finding to that effect and the reasons disclosed in the judgment for arriving at such conclusion, it is very difficult to sustain such an order. It is surprising that the Industrial Court has not bothered to consider the case of the workman as to whether there is an unfair labour practice committed by the employer, except by observing in one sentence in para 5 that, the complainant had not brought the evidence on record to hold that the respondent had engaged in unfair labour practices under Items 5 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act.

5. In the circumstances, the impugned order is set aside. The complaint is remanded to the Industrial Court for a fresh hearing. Hence, the following order:

O R D E R

(a) Industrial Court shall first frame the issues with the assistance of the parties.

b) In the event the parties desire to lead additional evidence, the Industrial Court may permit them to do so.

(c) The Industrial Court will then consider the

evidence which is already on record and the additional evidence led, in the light of the issues framed.

(d) The Industrial Court will give reasons for the findings it arrives at and not merely paraphrase the evidence on record.

(e) In the event the Industrial Court holds that there is an unfair labour practice, it will then consider as to whether the relief should be granted from the date the workman completed 240 days in service or from the date of the complaint or from the date of the order.

(f) The complaint to be disposed of within three months.

7. Petitions disposed of accordingly.

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